

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES PEEK,

Plaintiff,

v.

MISSOURI BOARD OF PROBATION
AND PAROLE, ALL MEMBERS, et al.,

Defendants.

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No. 4:16CV498 CEJ

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff's financial information, the Court assesses a partial initial filing fee of \$1.70, which is twenty percent of his average monthly deposit. *See* 28 U.S.C. § 1915(b). Additionally, this action is dismissed.

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than "legal conclusions" and "[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." *Id.* at 679. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. Determining whether a complaint states a plausible claim for relief [is] a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

The Complaint

This action concerns the revocation of plaintiff's parole. Defendants Cynthia Kane and James Fannon are parole officers and defendant Donna King is the Assistant Superintendent of the St. Louis Community Release Center (the "Center").

Plaintiff claims that Kane cited him for parole violations "that she knew or should have known that she did not have probable cause to bring against [him]." He says that defendant King conspired with Kane on the charges.

Plaintiff alleges that defendant Fannon found two of the three charges to be without cause but cited him for missing an appointment with his therapist. He claims that a panel of the Missouri Board of Probation and Parole (the "Board") revoked his parole as a result. He further claims that the panel found he had violated his parole by returning to the Center late.

Plaintiff asserts that defendant members of the Board extended his release date because he did not complete the Missouri Sex Offender Treatment. Plaintiff must remain in prison until his maximum release date of January 26, 2018.

Discussion

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court determined that where a judgment in favor of the plaintiff would necessarily implicate the validity of the plaintiff's conviction or the length of his sentence, a cause of action under § 1983 is not cognizable unless the plaintiff can show that his underlying "conviction or sentence had been reversed on direct appeal, declared invalid by a state tribunal authorized to make such a determination, or called into question by the issuance of a federal writ of habeas corpus." *Id.* at 487. "*Heck* applies to

proceedings [that] call into question the fact or duration of parole.” *Jackson v. Vannoy*, 49 F.3d 175, 177 (5th Cir.), *cert. denied*, 516 U.S. 851 (1995). A plaintiff in a § 1983 suit may not question the validity of the confinement resulting from a parole revocation hearing if he does not allege that the parole board’s decision has been reversed, expunged, set aside or called into question. *Littles v. Bd. of Pardons and Paroles Div.*, 68 F.3d 122, 123 (5th Cir.1995). Plaintiff has not made any showing that the decision to revoke his probation has been reversed, expunged, set aside or called into question. Therefore, the complaint is legally frivolous and will be dismissed pursuant to 28 U.S.C. § 1915(e).

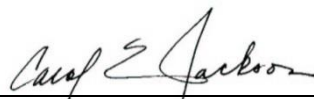
Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [ECF No. 6] is **granted**.

IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$1.70 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.¹

An order of dismissal will be filed separately.

Dated this 18th day of May, 2016.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

¹ Prisoners must pay the full amount of the \$350 filing fee. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner will deduct the payments and forward them to the Court each time the amount in the account exceeds \$10. 28 U.S.C. § 1915(b)(2).